IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.373 of 2007

Decided on : October 25, 2010

Suresh Kumar ...Appellant.

Versus

State of H.P. ...Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?.

For the Appellant : M/s Ajay Kochhar, Satyen Vaidya & Amit Sharma, Advocates.

For the Respondent : Mr. R.K. Sharma, Senior Additional Advocate General, and Mr. Rajinder Dogra, Additional Advocate General.

Surjit Singh, J (Oral)

Appellant Suresh Kumar has challenged his conviction and sentence for offences, under Section 302 and 201 of the Indian Penal Code, for allegedly murdering one Beli Ram and then destroying evidence, regarding commission of the offence of murder. Trial Court has sentenced him to undergo imprisonment for life and to pay a fine of ₹10,000/-, for offence under Section 302 of the Indian Penal Code. As regards offence, under Section 201 of the Indian Penal Code, he has been sentenced to undergo imprisonment for one year and to pay fine of ₹5,000/-.

2. Case of the prosecution, as per evidence, may be stated thus. Deceased Beli Ram, appellant Suresh

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Whether reporters of the local papers may be allowed to see the judgment?

Kumar and PW-4 Tej Singh all lived in different blocks of Government servant quarters, in the same locality, i.e. U.S. Club. They made friends with each other and would often sit in the evenings and have drinks. On 4th June, 2005, deceased and Tej Singh (PW-4) went to deceased's house, with a bottle of liquor, in the evening. They wanted to sit there and drink, to which deceased's wife objected, as she had young daughters in the house. The two then left for the house of Tej Singh. Around 8 in the evening, deceased's wife Dev Dassi (PW-1), accompanied by her two daughters, went to see Summer Festival at the Ridge, Shimla. They locked the house and delivered one of the keys of the lock to the deceased at the house of PW-4 Tej Singh. One of the daughters of Dev Dassi went to deliver the key.

3. PW-1 Dev Dassi and her daughters returned from the Ridge very late in the night. Time was around 2 a.m. They found the door of their house locked. Dev Dassi went to the house of Tej Singh to find out if her husband was still there. Door was closed from inside. She knocked at the door, but there was no response. She returned to her nearby house, thinking that her husband and Tej Singh might have gone to sleep.

4. Next morning, dead body of Beli Ram was spotted by PW-2 Janki Dass, living in that locality. Dead body was lying in a drain, below the path, leading from the house of the appellant to the house of the deceased. Janki

Dass informed the police. PW-26 Brijesh Sood, the then SHO Police Station Sadar, left for the spot. He saw the dead body and sent for the Forensic Science Expert, namely PW-11 Dr. J.R. Gaur. Spot was inspected by said Forensic Science Expert. From the path, above the spot where the dead body was lying in the drain, blood traces upto the quarter of the appellant, were seen. Following those blood traces, Expert Dr. Brijesh Sood and PW-26 Brijesh Sood went to the house of the appellant. It was locked from outside. However, the back door of the house opening into the bath room was open. Through that door, the room and the kitchen etc. of the house could be reached.

5. In the room, it was noticed that there were red coloured spots on a curtain and a cover of the quilt. Three tumblers (made of glass), one bottle of liquor containing a small quantity of liquor and a few empty bottles of liquor were found. It was also noticed that floor of the room had been washed and wiped freshly. All the articles, including quilt cover, tumblers, empty bottles, etc. were taken into possession. Blood stains were also lifted from the path, leading from the house of the appellant to the point of the path above the drain in which the dead body was lying.

6. Statement of PW-1 Dev Dassi, wife of the deceased, was recorded, under Section 154 of the Code of Criminal Procedure, which is Ex. PA. Inquest was conducted and requisite forms Ex. PJ and Ex. PW-26/C filled-in. Dead

body was sent to the Indira Gandhi Medical College for postmortem examination. PW-18 Dr. H.S. Sekhon of Forensic Medicine Department conducted the postmortem examination on 6th June, 2005. He noticed one injury on the forehead, shaped like mathematical sign of 'less than' (<), which was muscle deep. Several grazed abrasions, on the face, head, neck, upper limbs and lower limbs were also noticed. Cause of death was opined to be head injury. Postmortem examination was conducted at 12.10 p.m. on 6th June, 2005, and the probable time lag between the postmortem and the death was opined to be 36 hours.

7. Appellant, his nephew Manish and a friend of his nephew by the name of Vishal were arrested on 6th June, 2005. Appellant made disclosure statement, leading to the discovery of an iron rod, which was allegedly used to cause injury on the forehead of the deceased. The above-named nephew and a friend of the nephew of the appellant made disclosure statements, leading to the discovery of their clothes, bearing blood stains.

8. Cover of quilt, curtain, blood stains lifted from the path, iron rod got recovered by the appellant and the clothes, particularly pants got recovered by Manish and jacket got recovered by Vishal were sent to the Chemical Examiner alongwith the clothes of the deceased and the blood collected from the spot, where the dead body was lying. The Chemical Examiner, vide report Ex. PW-12/B,

opined that blood stains on the clothes of deceased Beli Ram, jacket of Vishal, shoes of Vishal and pants of Manish, as also specimen of the blood lifted from the spot and the path, were of human blood of 'AB' Group.

9. Investigating Officer collected evidence, indicating that the deceased left house of PW-4 Tej Singh around 8.45 p.m. on 4th June, 2005, saying that he would go to the house of the appellant to consume more liquor. Evidence collected by the police also showed that around 11 p.m., appellant, accompanied by his above-named nephew and nephew's friend, went to PW-4 Tej Singh to borrow a sum of ₹100/-, for buying more liquor. He, then accompanied by the above-named two accomplices, went to the house of PW-7 Sanjiv and asked him if he wanted to enjoy liquor and on his saying no, the appellant and his accomplices left his house. Appellant again went to Sanjiv's house, half an hour later. This time he was accompanied by one more boy, in addition to the above-named two accomplices and the three boys accompanying him then started drinking liquor from the bottle, which they were carrying.

10. Around 1.30 a.m., a brother of Sanjit, namely Rajiv (PW-5), accompanied by PW-8 Praveen and two more boys, reached Sajiv's house. Rajiv and the boys accompanying him took their meals. When they were taking their meals, PW-8 Praveen heard appellant and the

three boys, accompanying him, talking about the treatment they had meted out to deceased Beli Ram.

11. On completion of investigation, appellant was challaned in the Court of concerned Judicial Magistrate. His nephew Mansih and nephew's friend Vishal were sent to Juvenile Justice Board, as both of them were below 18 years of age. Case was committed to the Sessions Court by the Judicial Magistrate, after complying with the requirement of Section 207 of the Code of Criminal Procedure. Learned sessions Judge assigned the case to learned Additional Sessions Judge. Appellant was charged with offences, under Sections 302 and 201 of the Indian Penal Code, by the learned Additional Sessions Judge. He pleaded not guilty. So, he was put on trial.

12. There being no direct evidence, prosecution tried to connect the appellant with the crime by proof of the following circumstances:

> "1. On 04.06.2005 in the evening/night all the three accused were together and were also heard talking about their quarrel with deceased.
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> 2. Blood stains were found on the floor of accused's room and also on some articles lying in the room.
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> 3. Floor of the accused's room appeared to have been washed to wipe off blood stains.
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> 4. The piece of cloth stated by accused to have been used for washing floor contained traces of blood.

5. Trail of blood stains was found from accused's quarter up to the place where dead body was lying.

6. Sim-card belonging to the deceased was found lying near the dead body.

7. Blood was found on the accused's finger and the ring.

8. Weapon of offence was recovered at the instance of accused.

9. Plea of alibi taken by the accused is false."

13. A number of witnesses were examined by the prosecution to prove the aforesaid circumstances. Learned trial Court held that circumstances No.1, 2, 3, 5 and 9 stood established by the evidence led by the prosecution. With regard to the remaining four circumstances, i.e. 4, 6, 7 and 8, learned trial Court held that the same were not proved. It was concluded by the learned trial Court that proof of circumstances No.1, 2, 3, 5 and 9 above made a complete chain and led to only one hypothesis that the appellant was guilty of the offences, he had been charged with and to no other. Consequently, he was convicted and sentenced, as aforesaid.

14. We have heard the learned counsel for the appellant as also the learned Senior Additional Advocate General and scrutinized the evidence adduced by the prosecution.

15. It is true that there were marks of blood, starting from the house of the appellant and ending at that point of the path below which the dead body was found lying, at a

depth of about 15 feet, which fact, undoubtedly, leads to a conclusion that the deceased received a bleeding injury at the house of the appellant, especially when there is report of Chemical Examiner, Ex. PW-12/B, proving that the group of blood stains on the quilt cover Ex. PG, recovered from inside the house, matched with the group of blood stains found on the path as also at the site where the dead body lay, but this circumstance cannot be taken to be so strong a circumstances as to jump to the conclusion that the appellant was involved in the commission of the crime. The reason is that according to prosecution's own version, house of the appellant used to remain accessible through back door and this fact was known at least to the deceased and PW-4 Tej Singh. From the testimony of Tej Singh (PW-4), it appears that they used to have access to the house of the appellant through that door, whenever they went there for the purpose of drinking.

16. Learned trial Court concluded that the appellant and his above-named two accomplices had been talking at the house of PW-7 Sanjiv Kumar about their having manhandled to the deceased. This view of the learned trial Court is not borne out from the evidence. Learned trial Court has observed that PW-8 Praveen Kumar has testified this fact. That is not correct. What Praveen Kumar testified is that the three boys in the room were discussing about the manhandling of the deceased by them. These three boys

did not include the appellant, who is a man of 38 years. It has come in the testimony of PW-7 Sanjiv Kumar that when the appellant visited his house, three boys, i.e. his nephew Manish and nephew's friend Vishal and a third boy, whose name he did not know, accompanied him. Therefore, aforesaid circumstance No.1 cannot be said to have been proved.

17. Learned trial Court has also observed that the plea of alibi raised by the appellant is proved to be false. We do not agree with this view of the trial Court also. It is true that plea of alibi, as taken by the appellant, may not have been proved, beyond reasonable doubt, but that does not mean that it is proved to be false. There is absolutely no evidence, indicating that the appellant was in his house on the fateful evening. None of the witnesses examined by the prosecution has stated that he was at his house on that evening or night. On the contrary, prosecution's own evidence suggests that probably he did not visit his house that evening or night. He had been drinking till very late in the night, at the house of PW-7 Sanjiv Kumar, per his testimony, which fact suggests that he might not have visited his house, for taking meals that night, because meals are normally taken by the persons given to drinking, after they finish their drinks.

18. Nobody has come forward to say that on the relevant night deceased and the appellant were together at

appellant's house or for that matter at any other place, though the house of the appellant is surrounded by rows of houses, on both the sides. Deceased, according to prosecution story, went to appellant's palce around 8.45 p.m., when it is not late in the night in the month of June. Someone in the neighbourhood must have seen the deceased and the appellant together, at appellant's place.

19. Appellant is alleged to have caused the death of the deceased by dealing a blow of iron rod on his forehead. PW-18 Dr. H.S. Sekhon, who conducted the postmortem examination, specifically stated that the injury could not have been caused with iron rod. We see no reason to disagree with the testimony of the witness, because the shape and size of the injury on the head, as noticed hereinabove, itself suggests that it could not have been caused by means of iron rod.

20. In addition to what we have noticed hereinabove, there are several other circumstances, which negate the finding of the trial Court that the circumstantial evidence leads to no hypothesis other than that of the guilt of the appellant. Dead body, according to the prosecution story, had been dragged or carried along the path upto the point below which it was found lying, by the appellant and his two accomplices. However, no blood stains were found on the clothes, which the appellant was wearing on the

relevant night. His clothes were not even taken into possession, because they did not bear any blood like stains.

21. Further, though according to the prosecution there were four persons in the room, where the deceased was assaulted, i.e. the deceased, the appellant and his two accomplices, and all of them were drinking, yet only three tumblers were found in the room, where empty bottles were also lying.

22. According to the prosecution, a SIM Card of a mobile phone was recovered from the site where the dead body lay. This SIM Card, according to the prosecution, pertained to the mobile phone of the appellant. However, evidence on record suggests that this SIM Card had been purchased by PW-13 Hari Thapa for his mobile phone and lateron he had sold the mobile phone alongwith the SIM Card to PW-4 Tej Singh, in whose company the deceased was last seen alive, on the fateful night, per prosecution's own evidence. Presence of SIM Card of the mobile phone of PW-4 Tej Singh at the site where the dead body was found lying, suggests something totally different to the version given by the prosecution.

23. In view of the abovestated position, we are of the considered view that the prosecution case does not stand established, beyond reasonable doubt. Consequently, appeal is accepted, judgment of the trial Court, convicting and sentencing the appellant of offences, under Sections

302 and 201 of the Indian Penal Code, is set aside and the appellant is acquitted. He, being in jail serving out the sentence imposed by the trial Court, is ordered to be set at liberty forthwith, in case his detention is not required in any other case. Release warrant be prepared accordingly.

Appeal stands disposed of.

(Surjit Singh), J

October 25, 2010(sd) (Rajiv Sharma), J